

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3863 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRI LALJI THAKKARSHI KARIYA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR M NAGARKAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/97

ORAL JUDGMENT

#. The petitioner, a driver of the Gujarat State Road Transport Corporation, filed this Special Civil Application in this Court and challenge has been made to the Award of the Labour Court, Rajkot, in Ref.(LCR) No.674 of 1982 dated 27.4.82 to the extent wherein the Labour Court has not given full backwages to the petitioner for the period from 17.11.79 to 7.9.84.

#. The petitioner came to be dismissed from the services after the misconduct alleged against him was found proved in the departmental inquiry. The charge against the petitioner was that while he was driving the bus of the Corporation from Satadhar to Ahmedabad, on Jetpur-Virpur road, the bus was dashed against a stone, with the result that diesel tank of the bus was broken and 165 litres of diesel was lost. Chargesheet was served and after departmental inquiry he was dismissed from service. The petitioner has raised industrial dispute which was referred to the Labour Court, Rajkot, for adjudication and under the impugned Award, the order of dismissal from service was set aside and reinstatement has been ordered, but without backwages. Hence this Special Civil Application.

#. The learned counsel for the petitioner, relying on the decision of Apex Court in the case of Ramesh Chandra & Ors. v. Delhi Administration & Ors., reported in 1996(2) Current Labour Reports 944, contended that denial of backwages by Labour Court is wholly arbitrary. The Labour Court has denied backwages without giving reason whatsoever.

#. On the other hand, the learned counsel for respondent contended that it is a case where the petitioner has caused loss to the Corporation because of negligent driving and as such denial of backwages cannot be said to be arbitrary. In fact, the learned counsel for respondent contended that the finding of the Labour Court that it was a case of pure accident is not sustainable but as backwages were not awarded, the Corporation has not challenged that part of the Award. It has further been contended by learned counsel for respondent that the past conduct of petitioner has also to be taken into consideration. During the short period of service of seven and a half years, the petitioner has committed as many as seventeen defaults.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The decision of the Apex Court on which strong reliance has been placed by learned counsel for the petitioner is clearly distinguishable and is of little help to the petitioner in this case. In the decision cited, the three appellants before the Court and one Satyapal, Constable in Delhi Administration, were dealt with departmentally in respect of one and the same misconduct and were dismissed. Their appeal or revision

to the Department authorities were also dismissed. They were also tried on the same allegation wherein they were acquitted and clean acquittal was recorded. Their reinstatement was denied and hence they approached the Central Administrative Tribunal. In the case of Satyapal, the Tribunal quashed the order passed by disciplinary authority as well as that of appellate authority. The Tribunal has passed consequential order reinstating Satyapal in services and allowing him backwages. So far as the appellants are concerned, the Tribunal directed their reinstatement but denied backwages as they have not amended their application challenging the later order in revision. Thus the appellants have approached the Apex Court. The Apex Court held that when the appellants as well as Satyapal were proceeded against both, departmentally and by way of criminal prosecution on similar charges and all of them have been acquitted by Sessions Court and Tribunal has also held that the punishment imposed on all of them is based on no evidence and not in accordance with law in absence of very relevant and exceptional circumstances, the consequential order could also be on similar merit in the other cases. If it is not so, it will be arbitrary and unfair. The Apex Court further held that no exceptional circumstances are stated by the Tribunal. Though all the four delinquent employees were similarly situated, but while dealing with their cases of dismissal, reinstatement and backwages, the Tribunal had made a discrimination.

#. In the present case, the Tribunal has though held it to be a case of pure accident and further that no negligence should be attributed to the petitioner, but it is also recorded that a big stone was lying in the midst of the road, and the petitioner had dashed the vehicle against that stone which resulted in breaking of diesel tank and ultimately loss of diesel to the Corporation. However, the Award is not challenged by respondent and as such, that part of reinstatement may not be interfered with, but after going through the judgment of the Tribunal, I have my own reservation with the finding of the Tribunal that it is a pure accident and there was no negligence on the part of the petitioner. That finding is not well founded and the Tribunal has not taken care to appreciate the facts on which there was no dispute. Even if it is taken that one jeep was coming from other side with dazzling lights, how far it can be said to be a case where the petitioner's action to dash the bus against the stone on the road is justified. The road was, as per evidence, sufficiently wide to permit two vehicles simultaneously pass through. When the stone was

of big size, and lying in the midst of the road, all care should have been taken by the petitioner to save the bus. So though the finding of the Labour Court is there where the petitioner was not held to be negligent, but still looking to the facts of this case and moreso, when the petitioner is a driver of the Corporation and is in a habit of driving the vehicle in night, no interference can be made in the Award wherein backwages have been denied. However, it cannot be said that the Labour Court has not given any reason to deny the backwages to the petitioner. The Labour Court had noticed the fact that during the period of seven and a half years service, there were as many as seventeen defaults committed by the petitioner. Though those defaults were reported to be not very serious, the fact remains that the Labour Court has noticed that fact. The Labour Court has further noticed that though negligence may not be there but diesel tank was broken and there was loss of diesel and therefore taking aggregate of all these facts and circumstances, the Labour Court has considered it to be a fit case where only reinstatement should be ordered. It is a case where a lenient view has been taken by Labour Court. The petitioner is a driver and when there are seventeen defaults in discharging his duties as a driver in a short span of seven and a half years' service, how it can be said to be justified to award him backwages only because it was found to be a case of pure accident.

#. Taking into consideration the totality of the facts of this case, the finding of the Labour Court may not be perfect to the extent of negligence of the petitioner, but I do not consider it to be a fit case where any interference has to be made in the Award. Contrary to it, a liberal approach has been made in the case and petitioner has been ordered to be reinstated. The petitioner should have felt contended with the Award impugned rather than to challenge the same before this Court. The facts which have come on record do not justify the approach of the petitioner before this Court for relief of backwages.

#. Taking into consideration the facts of this case, this writ petition has no merits and the same deserves to be dismissed and accordingly the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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